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**THIS DISPOSITION  
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Paper No.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

Coventry Healthcare, Inc.,  
Coventry Corporation,  
Healthamerica Pennsylvania, Inc., and  
Maxicare Health Plans, Inc.

v.

Healthcard America, Inc.

Opposition No. 113,393 to application Serial No. 75/299,221  
filed on May 28, 1997

Philip D. Mitchell of Epstein Becker & Green, P.C. for  
Coventry Healthcare, Inc., Coventry Corporation, Healthamerica  
Pennsylvania, Inc., and Maxicare Health Plans, Inc.

Stephen J. Grifferty and Teresa A. Prescott of Tobin and  
Grifferty, P.C. for Healthcard America, Inc.

Before Simms, Hanak and Hohein, Administrative Trademark  
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Healthcard America, Inc. has filed an application to  
register the mark "HEALTHCARD AMERICA" and design, as shown



below,

for the services of "healthcare financing, medical savings accounts, and electronic claims filing."<sup>1</sup>

Coventry Healthcare, Inc., Coventry Corporation, Healthamerica Pennsylvania, Inc., and Maxicare Health Plans, Inc. have opposed registration on the ground that opposers "are engaged in the business of administering and managing health maintenance organizations (HMOs) and preferred provider organizations (PPOs) that are marketed to the general public"; that opposer Maxicare Health Plans, Inc. "is the owner, through assignment, of ... Registration No. 1,401,497 for the mark 'HEALTHAMERICA' (Reel/Frame Number 0857/0337) for [the services of] 'management of entities which provide prepaid health care services' in International Class 35; 'prepaid financing of health care services' in International Class 36; and 'providing health care services' in International Class 42[,], which ... issued on July 15, 1986 [and sets forth, for each class, a date of first use anywhere of January 17, 1983 and a date of first use in commerce of April 21, 1983; combined affidavit §§8 and 15]"; that such registration "is valid and subsisting, and the mark encompassed by the Registration remains in use"; that opposer Coventry

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<sup>1</sup> Ser. No. 75/299,221, filed on March 28, 1997, which is based on an allegation of a bona fide intention to use the mark in commerce. The term "HEALTHCARD" is disclaimed.

Corporation "holds a valid exclusive license from Maxicare [Health Plans, Inc.] to use the mark 'HEALTHAMERICA' in the states of Pennsylvania, Illinois, West Virginia and Missouri"; that opposer Coventry Healthcare, Inc. "is the corporate parent of Coventry [Corporation]"; that opposer Healthamerica Pennsylvania, Inc. "holds a valid sublicense from Coventry [Corporation] to use the 'HEALTHAMERICA' mark in the states of Pennsylvania, Illinois, West Virginia and Missouri" and, as a subsidiary of Coventry Corporation, "has used the 'HEALTHAMERICA' mark continuously in commerce from at least as early as October 1, 1998 ... in connection with the operation of HMOs and PPOs"; that applicant "intends to use the ... 'HEALTHCARD AMERICA' and Design mark in connection with healthcare financing, including the establishment of medical savings accounts, which is as an alternative to HMOs, PPOs and traditional indemnity insurance"; and that applicant's "mark 'HEALTHCARD AMERICA' and Design[, ] when used with the services ... recited in the Application, so resembles the 'HEALTHAMERICA' mark, registered for similar healthcare financing and related services, as to [be] likely to cause confusion, or to cause mistake or to deceive."

Applicant, in its answer, has admitted that it intends to use its mark "in connection with health care

financing and medical savings accounts," but has denied the remaining salient allegations of the notice of opposition.<sup>2</sup>

The record consists of the pleadings; the file of the opposed application; and, as explained below, the admission by applicant that the registration pleaded in the notice of opposition is subsisting and owned by opposers. Neither party took testimony or introduced any other evidence. Briefs have been filed, but an oral hearing was not requested.

Priority of use is not in issue in an opposition proceeding where it is established that the registration for a mark which is pleaded in the notice of opposition is subsisting and is owned by the opposer or opposers. See King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974). Although, in the present case, opposers have failed to make their pleaded registration for the mark "HEALTHAMERICA" properly of record,<sup>3</sup> applicant concedes in its brief (at 4) that:

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<sup>2</sup> Although applicant has also nominally pleaded several "affirmative defenses," such allegations are essentially amplifications of its denials of a likelihood of confusion as alleged by opposers.

<sup>3</sup> We note, in this regard, that as indicated in TBMP §703.02(a), an opposer or opposers pleading ownership of a subsisting federal registration may properly make such registration of record by (i) filing with the notice of opposition two copies of the registration which have been prepared and issued by the United States Patent & Trademark Office ("USPTO") and which show both the current status of and current title to the registration; (ii) filing a notice of reliance, during the testimony period for presenting the opposer's or opposers' case-in-chief, on an accompanying copy of the registration which has been prepared and issued by the USPTO and which shows both

Evidencing Opposers' intent for a broad range of services or proposed services, Opposers registered "HEALTHAMERICA" for "management of entities which provide prepaid health care services" in Class 35; ["]prepaid financing of health care services" in Class 36; and ["]providing health care services" in Class 42.

Such statement constitutes an admission by applicant that opposers' pleaded registration for the mark "HEALTHAMERICA" is subsisting and is owned by opposers. See West Point-Pepperell, Inc. v. Borlan Industries Inc., 191 USPQ 53, 54 (TTAB 1976) [where opposer pleaded ownership of a registration for the mark "ULTRA/VELLUX" for blankets, statement in applicant's brief that "[t]he trademark 'ULTRA-VELLUX', however, is registered simply for blankets" taken by the Board "as an admission that such registration exists and is owned by opposer"]. Thus, there is no issue as to priority in this proceeding and, as further stated by applicant in its brief,

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the current status of and current title to the registration; (iii) introducing a copy of the registration, during the testimony period for presentation of the case-in-chief, as an exhibit to the testimony of a witness who has knowledge of the current status of and title to the registration and who thus can establish that the registration is still subsisting and is owned by the offering party or parties; or (iv) having the adverse party stipulate to such facts. See Trademark Rules 2.122(d)(1), 2.122(d)(2) and 2.123(b). Here, opposers annexed to the notice of opposition only a plain copy of their pleaded registration (which, in any event, is not in evidence since, in light of Trademark Rule 2.122(c), such copy is merely an exhibit attached to the pleading) and, as noted previously, opposers did not take testimony or submit any other evidence during their initial testimony period.

the sole issue to be determined in this case "is whether the parties' respective service marks will cause a 'likelihood of confusion' to consumers" from contemporaneous use thereof in connection with any of their respective services.

Upon consideration of the pertinent factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973), for determining whether a likelihood of confusion exists, we find that, on this minimal record, opposers have failed to satisfy their burden of demonstrating that confusion as to source or sponsorship is likely to occur with respect to the contemporaneous use by applicant of the mark "HEALTHCARD AMERICA" and design for the services of "healthcare financing, medical savings accounts, and electronic claims filing" and the use by opposers of the mark "HEALTHAMERICA" for the services of "management of entities which provide prepaid health care services" and "providing health care services." In particular, even though we find that the respective marks, for the reasons discussed below, are substantially similar, there is simply no evidence which shows that applicant's healthcare financing, medical savings accounts, and electronic claims filing services, which on their face are distinctly different in nature from both opposers' services of the management of entities which provide prepaid health care services and the providing of health care

services, are nevertheless so closely related in the mind of the general purchasing public that consumers would be likely to attribute such services to a common provider, merely because the respective services all happen to involve some aspects of health care. Instead, applicant's services appear to relate to matters of health care insurance, while the particular services of opposer, as noted above, respectively relate to management of entities which provide prepaid health care services and to the rendering of health care services by medical professionals. In light of the distinctly different nature of such services, a likelihood of confusion has not been shown.<sup>4</sup>

However, as to the parties' contemporaneous use of their respective marks in connection with the services of "healthcare financing, medical savings accounts, and electronic claims filing," on the one hand, and the services of "prepaid financing of health care services," on the other, it is clear that the latter services, which would be rendered

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<sup>4</sup> As our principal reviewing court has cautioned in this regard:

We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations but with the practicalities of the commercial world, with which the trademark laws deal.

Electronic Design & Sales Inc. v. Electronic Data Systems Corp., 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992), quoting from Witco Chemical Co. v. Whitfield Chemical Co., 418 F.2d 1403, 1405, 164 USPQ 43, 44-45 (CCPA 1969), *aff'g*, 153 USPQ 412 (TTAB 1967).

by opposers under their "HEALTHAMERICA" mark, are encompassed by the former services of "prepaid healthcare financing," which would be offered by applicant under its "HEALTHCARD AMERICA" and design mark.<sup>5</sup> Moreover, while not the same, applicant's services of "medical savings accounts" plainly are related to opposers' "prepaid financing of health care services" since, as opposers persuasively point out in their initial brief, the respective services "will achieve the same goal, i.e., the provision of health care coverage to the public, even if the exact mode of service may not be identical." As conceded by applicant in its brief, applicant "focuses solely on healthcare financing vehicles" and has, "[t]o date, ... concentrated most of its efforts on healthcare financing through the use of Medical Savings Accounts," which its customers assertedly "[m]ay access ... via a 'HealthCard America' MasterCard.", Consequently, and although we agree with applicant that its remaining services of "electronic claims filing" have not been demonstrated by opposers to be

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<sup>5</sup> It is well settled, in this regard, that the issue of likelihood of confusion must be determined in light of the services and/or goods set forth in the opposed application and pleaded registration and, in the absence of any specific limitations therein, on the basis of all normal and usual channels of trade and methods of distribution for such services and/or goods. See, e.g., CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); and Paula Payne Products Co. v. Johnson Publishing Co., Inc., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973).



closely related to their services of "prepaid financing of health care services," it is still the case that, if applicant were to provide "healthcare financing" and "medical savings accounts" services under a mark which is the same as or substantially similar to a mark under which opposers provide the identical in part and otherwise closely related services of "prepaid financing of health care services," confusion of consumers as to the origin and/or affiliation of such services would be likely to occur.

We therefore turn to consideration of the similarities and dissimilarities in the respective marks when considered in their entirety. It is necessary, however, to keep in mind that, as pointed out in *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992), *cert. denied*, 506 U.S. 1034 (1994), "[w]hen marks would appear on virtually identical ... services, the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." While applicant contends, in the present case, that its mark "includes a prominent design" which makes such mark "highly distinguishable from Opposers' mark," we concur with opposers that, as stated in their brief (at 8):

Notwithstanding the requirement that marks must be viewed in their entirety, a particular feature or element of a mark may

be accorded greater weight if the impression upon purchasers would be remembered and relied upon. Thus, if one of the marks comprises both a word and a design, the word portion is normally accorded greater weight because it would be used by prospective consumers to order the ... services or be spoken through word of mouth. See In re Appetito Provisions Co., 3 U.S.P.Q.2d 1553, 1554 (T.T.A.B. 1987); Ceccato v. Manifattura Lane Gaetano Muzotto [sic] & Figli, Spa., 32 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1994).

Here, it is the literal elements of applicant's "HEALTHCARD AMERICA" and design mark which would be utilized by consumers when asking about or otherwise referring to its services, including its "healthcare financing" and "medical savings accounts" services. Such elements are substantially similar in sound, appearance and connotation to opposers' "HEALTHAMERICA" mark, which is utilized, in particular, in connection with the services of "prepaid financing of health care." Such services, as noted previously, are identical in part and otherwise closely related to the "healthcare financing" and "medical savings account" services applicant has admitted it intends to offer under its mark. Although applicant's mark also includes the term "CARD," that term is obviously descriptive of the credit cards which, as admitted by applicant in its brief, will be utilized by subscribers to its "healthcare financing" services and, in particular, its "medical savings accounts" services. The presence of the term

"CARD" in applicant's mark, like the design element therein, is therefore insufficient to distinguish applicant's mark from opposers' mark. See, e.g., In re Equitable Bancorporation, 229 USPQ 709, 710-11 (TTAB 1986) [mark "RESPONSE" for banking services so resembles the mark "RESPONSE CARD" for banking services rendered through 24-hour automatic teller machines as to be likely to cause confusion]. Overall, when utilized in connection with the respective services of the parties as indicated above, applicant's "HEALTHCARD AMERICA" and design mark engenders a commercial impression which is substantially similar commercial impression to that projected by opposers' "HEALTHAMERICA" mark.

We accordingly conclude that the contemporaneous use of the parties' marks is likely to cause confusion as to source or sponsorship of the parties' respective services. In particular, consumers of health care financing services would be likely to view applicant's substantially similar "HEALTHCARD AMERICA" and design mark for its "medical savings accounts" as an adjunct to, or a new line of services from, the same source as the "prepaid financing of health care services" rendered under opposers' "HEALTHAMERICA" mark.

**Decision:** The opposition is sustained and registration to applicant is refused.